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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION

**TERENCE B. BURKE,**

Case No. 6:10-CV-6328-TC

Plaintiff,

vs.

Defendant's  
REQUEST FOR JUDICIAL NOTICE OR  
INCORPORATION BY REFERENCE

**WELLS FARGO BANK N.A.,**

Defendant.

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Pursuant to Federal Rule of Evidence ("FRE") 201, defendant Wells Fargo Bank, N.A. (improperly named in the summons), respectfully requests this Court to take judicial notice of the documents attached to the Declaration of Pilar C. French submitted with this request. Alternatively, defendant requests the Court to consider them pursuant to the incorporation by reference doctrines.

FRE 201 gives the Court the power to take judicial notice of facts "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." FRE 201(b). This Court may take judicial notice of documents that are matters of public record without converting a motion to dismiss into a motion for summary judgment. *See MGIC Indem.*

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*Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) (holding district court, when determining whether complaint fails to state a claim, may take “judicial notice of matters of public record outside the pleadings[.]”). In addition, “documents whose contents are alleged in a complaint and whose authenticity no party questions \* \* \* may be considered” in the context of a motion to dismiss. *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1405 n.4 (9th Cir. 1996) (quoting *Fecht v. The Price Co.*, 70 F.3d 1078, 1080 n.1 (9th Cir. 1995)); *U.S. v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (“Even if a document is not attached to a complaint, it may be incorporated by reference into a complaint if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff’s claim.”). When a plaintiff fails to introduce a pertinent document as part of her pleading, the defendant may do so as part of its motion to dismiss, and such documents will not be considered outside the pleadings. *Branch v. Tunnell*, 14 F.3d 449, 453-54 (9th Cir. 1994), *overruled on other grounds*, *Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002). Judicial notice may be taken at any stage of the proceedings. FRE 201(f).

The following documents are proper subjects of judicial notice because they are documents whose contents are alleged in plaintiff’s Original Petition or because they are a matter of public record, publicly available, and whose accuracy are not reasonably subject to debate. FRE 201(b).

1. The Note dated November 30, 2006. (Original Petition 1:10-11, by inference from “a consumer contract for the refinance.”) The Note is attached to the Declaration of Pilar C. French in Support of Defendant’s Request For Judicial Notice or Incorporation by Reference (“French Decl.”), filed concurrently herewith as Exhibit 1.

2. Exhibits 2, 3, and 4 are matters of public record and, therefore, properly subject to judicial notice.

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For the foregoing reasons, defendant respectfully requests that the Court grant their request for judicial notice of the documents attached to the Declaration of Pilar C. French in Support of Request for Judicial Notice.

DATED: October 29, 2010

LANE POWELL PC

By /s/ Pilar C. French  
Pilar C. French, OSB No. 962880  
Telephone: 503.778.2170  
Attorneys for Defendant

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 29, 2010, I caused to be served a copy of the foregoing REQUEST FOR JUDICIAL NOTICE OR INCORPORATION BY REFERENCE on the following person(s) in the manner indicated below at the following address(es):

Terence Burke  
771 Shadow Wood Drive  
Bend, OR 97702 (name and address in complaint)

And

Terence B. Burke  
PO Box 658  
Sisters, OR 97301 (name and address in summons)

- ☐ by **CM/ECF**
- ☐ by **Electronic Mail**
- ☐ by **Facsimile Transmission**
- ☒ by **First Class Mail**
- ☐ by **Hand Delivery**
- ☐ by **Overnight Delivery**

/s/ Pilar C. French  
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Pilar C. French

CERTIFICATE OF SERVICE